Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	
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To: The Commission

REPLY OF DOBSON CELLULAR SYSTEMS, INC.
TO OPPOSITIONS TO DOBSON'S PETITION FOR RECONSIDERATION
OF THE *ETC CRITERIA ORDER*

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August 15, 2005

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SUMMARY

Dobson presents this reply to the oppositions to its Petition for Reconsideration ("Petition") filed by TDS Telecommunications, the Independent Telephone and Telecommunications Alliance, and the Western Telecommunications Alliance (the "ILEC Petitioners"); the Nebraska Rural Independent Companies (the "Nebraska Companies"); and the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("NTCA/OPASTCO"). Specifically, the fundamental reasons behind Dobson's argument in its Petition that the Commission should modify the five-year network improvement plan remain unrebutted. Dobson does not oppose filing a network improvement plan to demonstrate its commitment and ability to provide the supported services, but no filing party rebutted concerns raised by Dobson, CTIA and other wireless carriers in their petitions for reconsideration regarding the inaccuracies that would result from requiring wireless ETCs to make predictions for five years into the future. In fact, two state commissions have rejected a five-year planning requirement, instead opting for a two-year requirement because of the dynamic nature of the telecommunications market.

Dobson lauds the ILEC Petitioners for agreeing with Dobson, CTIA and other wireless carriers that shortening the planning horizon is warranted. The Commission, however, should reject the ILEC Petitioners' attempt to condition this agreement on an unreasonable requirement for ubiquity of coverage. The ILEC Petitioners assert that the statute requires a degree of ubiquity of service that they themselves could never meet and that the Commission repeatedly has rejected in favor of the reasonable request standard. Instead, to ensure that LECs are using their universal service support for the purpose intended, the Commission should require that LEC ETCs also file network improvement plans. Contrary to the ILEC Petitioners' assertions, state carrier of last resort obligations are unlikely to be sufficient to ensure such carriers' appropriate use of funds. Many rural LECs are lightly regulated or unregulated at the state level.

Opponents also fail to rebut Dobson's position that the designation and reporting requirements focus excessively on build-out, despite the statute's emphasis on the provision and maintenance of the supported services. The statute requires that federal universal service funding be used for maintenance and support. It is overtly discriminatory not to permit CETCs to use funding for maintenance purposes when ILECs use virtually all of their support for maintenance of their networks.

The Commission should find that defining a reasonable request for service for wireless ETCs is a matter of federal law that promotes Congress's goal of a uniform, national and deregulatory scheme for wireless carriers. Contrary to the Nebraska Companies' argument, the statute does not grant such authority to the states, and the Commission lacks the jurisdiction to delegate this authority to the states.

The Commission should grant Dobson's request for reconsideration regarding its requirement that information regarding a carrier's five-year plan be submitted at the wire center level. Requiring the submission of such data at the wire center level will increase inaccuracies, decrease the usefulness of the data and increase costs to wireless ETCs. The Minnesota commission agrees with Dobson's argument and will not require wireless ETCs to file such information at the wire center level.

Finally, the ILEC Petitioners agree with Dobson and other carriers that CETCs should be subject to enhanced outage reporting requirements. Since no other party mentioned the issue, there is agreement that the additional reporting requirements for competitive ETCs should be rescinded.

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TO OPPOSITIONS TO DOBSON'S PETITION FOR RECONSIDERATION
OF THE *ETC CRITERIA ORDER*

Dobson Cellular Systems, Inc. ("Dobson"), on behalf of itself and its affiliated wireless carriers,[1] hereby replies to oppositions or comments filed against its petition for reconsideration of the *ETC Criteria Order*.[2] Specifically, Dobson responds to oppositions or comments filed by TDS Telecommunications, the Independent Telephone and Telecommunications Alliance, and the Western Telecommunications Alliance (the "ILEC Petitioners"); the Nebraska Rural Independent Companies (the "Nebraska Companies"); and the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("NTCA/OPASTCO").[3]

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[1] Dobson and American Cellular Corporation ("ACC") are wholly-owned subsidiaries of Dobson Communications Corporation. ACC is managed by Dobson pursuant to a management agreement. Both Dobson and ACC hold Cellular Radiotelephone Service and Personal Communications Service licenses.

[2] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report & Order*, 20 FCC Rcd 6371 (2005) ("*ETC Criteria Order*").

[3] Comments on Petitions for Reconsideration of *ETC Designation Order* of the ILEC Petitioners, CC Docket No. 96-45 (filed Aug. 4, 2005) ("ILEC Petitioners Comments"); Opposition to Petitions for Reconsideration and Clarification of the Nebraska Rural Independent
(continued on next page)

I. THE NEED TO MODIFY THE FIVE-YEAR PLAN REMAINS UNREBUTTED

Both the Nebraska Companies and NTCA/OPASTCO oppose Dobson's request that the Commission reconsider certain network improvement plan obligations.[4] The bulk of their comments, however, focus on the need for accountability in the use of support, which Dobson does not contest.[5] As Dobson states in its Petition for Reconsideration ("Petition"),[6] it does not oppose filing a network improvement plan to demonstrate its commitment and ability to provide the supported services. Rather, Dobson opposes the unreasonably burdensome aspects of the plan, particularly the requirement to file a plan that requires forecasting five years into the future.[7]

Neither the Nebraska Companies nor NTCA/OPASTCO set forth a solid argument as to why the Commission must require planning for five years into the future.[8] As Dobson, CTIA and other wireless carriers argue in their petitions for reconsideration, five years is too far into the future for wireless carriers to accurately plan network construction or predict their network

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Companies, CC Docket No. 96-45 (filed Aug. 4, 2005) ("Nebraska Companies Opposition"); Opposition to Petitions for Reconsideration of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies, CC Docket No. 96-45 (filed Aug. 4, 2005) ("NTCA/OPASCTO Opposition").

[4] Petition for Reconsideration of Dobson Cellular Systems, Inc., CC Docket No. 96-45, at 3-7 (filed June 24, 2005) ("Dobson Petition").

[5] *See*, *e.g.*, Nebraska Companies Opposition at 3-4; NTCA/OPASTCO Opposition at 2-3.

[6] Dobson Petition at 3.

[7] *Id.* at 3-4.

[8] In addition to the specific five-year planning term, neither the Nebraska Companies nor NTCA/OPASTCO provided any response to Dobson's argument that the planning requirements also ask for an unreasonably burdensome degree of specificity and detail, particularly given the long timeframe involved. Dobson noted, for example, that projecting signal quality, coverage,
(continued on next page)

expenditures.[9] Dobson notes that carriers develop capital budgets on an annual basis, and circumstances change year to year – such as the financial markets, technological changes, competitive dynamics, regulatory changes and the financial position of the company – that preclude the ability of carriers to develop an accurate budget more than twelve months in advance.[10] Similarly, Centennial states that since forecasts of USF support are short term (sixty days prior to the start of each quarter, USAC submits to the Commission a forecast of support for the ensuing quarter), "[t]here is … no reliable way to determine how much USF support could be expected over the five-year planning horizon."[11] Since Dobson and others have shown that plans predicting five years into the future will not be accurate, such plans will not effectively address the concerns raised by the Nebraska Companies and NTCA/OPASTCO. The Nebraska Companies' argument that "[w]ithout [a five year] plan, the Commission and state commissions cannot make a determination that the carrier actually has a planned commitment to serve those areas,"[12] is simply not true. If the Commission adopts a shorter planning requirement, wireless ETCs will be able to demonstrate their future commitments more accurately, thereby giving the

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capacity or projected start and completion dates is difficult to determine with certainty over a single year, let alone five years. *Id.* at 4.

[9] *Id.* at 3-4; Petition for Reconsideration of CTIA – The Wireless Association, CC Docket No. 96-45, at 3-7 (filed June 24, 2005) ("CTIA Petition"); Petition for Reconsideration and Clarification of Nextel Partners, Inc., CC Docket No. 96-45, at 11-12 (filed June 24, 2005) ("Nextel Partners Petition"); Petition for Reconsideration of Centennial Communications Corp., CC Docket No. 96-45, at 3-5 (filed June 24, 2005) ("Centennial Petition").

[10] Dobson Petition 3; *see also* Nextel Partners Petition at 11 (noting that because of the unknowns of consumer demand and technological change, "the investment community on which Nextel Partners relies to finance its network expansion neither requests nor expects forecasts of the sort requested under the *Report and Order*").

[11] Centennial Petition at 3.

[12] Nebraska Companies Opposition at 4.

FCC and state commissions the information they need to ensure the wireless carrier's commitment and ability to provide universal service in the designated area.

At least two states have found that a five-year planning requirement was unnecessary. In considering whether their states should adopt the FCC's new regulations set forth in the *ETC Criteria Order*, both the Minnesota and Idaho commissions approved a two-year planning requirement instead of the five-year requirement in the *ETC Criteria Order*. The Minnesota Public Utilities Commission ("Minnesota PUC") expressed concerns similar to Dobson's with respect to burdens and accuracy under a five-year requirement, stating that "the costs of preparing five-year plans would outweigh the benefits, since much of the information relating to the latter part of the five-year period would be speculative."[13] The Idaho Public Utilities Commission reached similar conclusions, finding that "a two-year network plan in the dynamic telecommunications market strikes the appropriate balance between demonstrating a commitment to improve services and obtaining meaningful information."[14]

The ILEC Petitioners, like the state commissions, agree with the arguments made by Dobson, CTIA and other wireless carriers that shortening the time frame is warranted. The ILEC Petitioners state that they do "not dispute the wireless petitioners' contention that a five-year horizon is too long for any realistic network improvement plan,"[15] adding that "[i]t may indeed

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[13] *Possible Changes to the Commission's Annual Certification Requirements Related to Eligible Telecommunications Carriers' Use of the Federal Universal Service Support; Commission Investigation to Consider Adopting the FCC's Standards for Designating Eligible Telecommunications Carriers,* Docket Nos. P-999/M-05-741, P-999/CI-05-1169, at 9 (rel. July 21, 2005) ("*Minnesota PUC Order*").

[14] *Application of WWC Holding Co., Inc. DBA Cellular-One, Seeking Designation as an Eligible Telecommunications Carrier that May Receive Federal Universal Service Support,* Case No. WST-T-05-1, Order No. 29841, at 9 (rel. Aug. 4, 2005).

[15] ILEC Petitioners Comments at 3.

be unreasonable to expect wireless carriers to provide specific network deployment plans for a period in excess of one to two years."[16]

Although the ILEC Petitioners agree that it is unrealistic to expect that wireless carries can provide network improvement plans for five years into the future, they caveat their acknowledgement, stating that the "network improvement plans must include a fundamental requirement that each plan demonstrate a concrete intention to achieve, within a reasonable time, the ubiquitous service coverage required by the statute."[17] For the ILEC Petitioners, "ubiquitous" appears to be "the provision of service to *all* rural residents where such service is otherwise not economically viable."[18]

As Dobson has stated previously, it takes no issue with being required to demonstrate that its universal service funding is being used to build out, over a reasonable time frame, to new areas within its designated service area, along with the other uses mandated by Section 254(e). Dobson, however, does not agree with the ILEC Petitioners' continued calls for competitive ETCs to provide coverage throughout the geography of the designated area – a standard, as Dobson and others have argued before, that CETCs are not required to meet and that the ILEC Petitioners themselves cannot achieve.[19] As the Commission stated, an "incumbent LEC is required to make service available to all consumers upon request, but the incumbent LEC may

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[16] *Id.*

[17] *Id.* at 3-4.

[18] *Id.* at 4 (emphasis in original).

[19] Opposition of Dobson Cellular Systems, Inc. to Petition for Reconsideration of the *ETC Criteria Order*, CC Docket No. 96-45, at 2-3 (filed Aug. 4, 2005) ("Dobson Opposition"); *see also* Opposition of CTIA – The Wireless Association, CC Docket No. 96-45, at 4 (filed Aug. 4, 2005); Opposition to Petition for Reconsideration of Alltel Communications, Inc., CC Docket

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not have facilities to [serve] every possible consumer."[20] As such, CETC requirements regarding ubiquity "should be no different."[21] The Commission determined that "[a] new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request."[22]

As noted above, even the Commission acknowledges that incumbent LECs cannot have ubiquitous service. The ILEC Petitioners, however, indicate in their opposition that "ILECs already provide ubiquitous service coverage in their designated service area pursuant to rigorous state COLR requirements,"[23] and therefore CETCs should be required to provide this same ubiquitous service. Incumbent LECs do not *in fact* ubiquitously serve their entire study areas. In reality, an ILEC's service is limited to the specific geographic points at the ends of their current subscriber lines. Customers not served by these subscriber lines can only receive service from a wireline carrier by paying a substantial extension charge and possibly enduring a lengthy construction delay. In contrast, wireless carriers provide true ubiquitous service in the areas where they provide service. If the Commission chooses to require competitive ETCs to provide ubiquitous service, ILECs must be held to the same standard.

The ILECs' purported "ubiquitous" coverage, as well as state carrier-of-last-resort ("COLR") requirements, also are the reasons the ILEC Petitioners argue that they should be

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No. 96-45, at 2-4 (filed Aug. 4, 2005); Opposition to Petition for Reconsideration of The Alliance of Rural CMRS Carriers, CC Docket No. 96-45, at 6-7 (filed Aug. 4, 2005).

[20] *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, *Declaratory Ruling*, 15 FCC Rcd 15168, 15174 (2000).

[21] *Id.* at 15174-75.

[22] *Id.* at 15175.

[23] ILEC Petitioners Comments at 5.

exempt from filing their own network improvement plans, which Dobson called for in its Petition for Reconsideration.[24] The fact that ILEC networks are already built out, however, is precisely why Dobson argued in the first place that ILECs should be required to file such plans. As noted in Dobson's Petition, it is hard to imagine how ILECs can spend the enormous amount of support they receive, given that their networks are mature.[25] The Commission should ensure that ILECs, too, are using their universal service support only for the "provision, maintenance, and upgrading of facilities"[26] and not on unsupported services, such as DSL or other high-bandwidth services.

In fact, many rural LECs are lightly regulated or unregulated at the state level. If the Commission does not require that ILECs file plans forecasting their use of universal service funding, it should at least require that the ILECs file evidence that the state has rigorous requirements for ILEC investment and pricing, that such requirements apply to them and that they are meeting those requirements. The Commission's obligation to ensure appropriate use of federal universal service support is no less important when the recipient is an ILEC.

Opponents also fail to rebut Dobson's position that the designation and reporting requirements focus excessively on build-out, despite the statute's emphasis on the provision and maintenance of the supported services.[27] NTCA/OPASTCO's argument that CETCs only can use universal service funding for the maintenance of their networks "once the networks are fully

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[24] *Id.*

[25] Dobson Petition at 6.

[26] 47 U.S.C. § 254(e).

[27] Dobson Petition at 6.

built out"[28] is without merit. Under the statute, carriers receiving universal service support – both LECs and CETCs – "*shall* use that support only for the provision, maintenance, *and* upgrading of facilities and services for which the support is intended."[29] Therefore, not only are CETCs permitted to use universal service funding to maintain their networks while their networks are being built out, they are *required to do so* according to the statute. The Commission cannot ignore these statutory provisions.

Dobson therefore requests that the Commission modify the showings required in ETC designation proceedings and in annual certifications to allow ETCs to report on expenditures in the designated area for provision of the supported services and maintenance of the carrier's network. It is overtly discriminatory not to permit CETCs to use funding for maintenance purposes when ILECs use virtually all of their support for maintenance of their networks. Even the ILEC Petitioners recognize that network improvement plans should "contemplate the use of USF support for the 'provision and maintenance' of service."[30] Moreover, maintenance of a quality network is an public interest consideration, particularly concerning public safety issues in rural areas. CETCs require funding to maintain the quality of their network, and the Commission must recognize the importance of this issue by modifying the focus of its network improvement plan requirements.

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[28] NTCA/OPASCTO Opposition at 4.

[29] 47 U.S.C. § 254(e) (emphasis added).

[30] ILEC Petitioners Comments at 3.

II. DEFINING A REASONABLE REQUEST FOR SERVICE IS A MATTER OF FEDERAL LAW THAT PROMOTES CONGRESS'S GOAL OF UNIFORM, NATIONAL REGULATION FOR WIRELESS CARRIERS

Both the Nebraska Companies and NTCA/OPASCTO oppose Dobson's position that defining a "reasonable request for service" is a matter of federal law. The Nebraska Companies attempt to argue that states can define "a reasonable request for service" because "Section 214(e)(2) delegates to the states the right to determine what constitutes a reasonable request for service."[31] Thus, the Nebraska Companies do not cite any specific statutory authority for the states to do so; rather, they infer such authority from the states' role in designating ETCs in rural areas.

Section 214 does not even mention the word "reasonable request for service." The relevant statute is Section 201(a), which does not specifically delineate a role for state commissions or even mention state commissions. As such, no delegation has occurred under the terms of the Communications Act, and therefore the Nebraska Companies' argument must be rejected.

Nor may the FCC delegate its authority to the states. The D.C. Circuit in the *USTA II* case stated that "federal agency officials … may not subdelegate to outside entities – private or sovereign – absent affirmative evidence of authority to do so."[32] The court determined that state commissions were considered to be "outside entities" and therefore could not be delegated to unless specific evidence existed permitting such delegation.[33] In terms of the Communications Act, which has provisions that permit subdelegation to state commissions, the court found that in

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[31] Nebraska Companies Opposition at 7.

[32] *United States Telecom Assoc. v. FCC*, 359 F.3d 554, 566 (D.C. Cir. 2004).

[33] *Id.*

order for subdelegation to a state commission to be permitted under the Communications Act, the statute had to "delineate a particular role for the state commissions."[34] Section 201(a) does not delineate such a role to the states.

NTCA/OPASCTO argues that states should define "a reasonable request for service" because "all carriers designated as ETCs by a state commission should be subject to the same set of requirements."[35] Such an argument cannot withstand very basic scrutiny. Congress clearly has set forth a different regulatory path for wireless carriers, as evidenced by Section 332, which explicitly prohibits states from regulating "the entry of or the rates charged by" a wireless carrier.[36] Wireless carriers do not check Section 332 at the door once they benefit from Sections 214 and 254 by being designated as an ETC. Supreme Court precedent requires various provisions of a statute to be read "so as not to create a conflict" but, instead, to give effect to each provision.[37] Moreover, at least one district court and the Commission itself has found that Sections 254 and 332 are not irreconcilably inconsistent.[38] As such, Sections 332, 214 and 254 must be construed together, preventing state commissions from imposing rate and entry

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[34] *Id.* at 568.

[35] NTCA/OPASTCO Opposition at 6.

[36] 47 U.S.C. § 332(c)(3).

[37] *Louisiana PSC v. FCC,* 476 U.S. 355, 371 (1986); *Ruckelshaus v. Monsanto Co.,* 467 U.S. 1018 (1984) (noting that statutes should be read to foster harmony rather than conflict with each other).

[38] *Mountain Solutions, Inc. v. State Corporation Commission of the State of Kansas,* 966 F. Supp. 1043, 1048 (D. Kan. 1997); *Petition of Pittencrief Communications, Inc. for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995,* File No. WTB/POL 96-2, *Memorandum Opinion and Order,* 13 FCC Rcd 1735, 1748-49 (1997).

regulation on wireless carriers, even if the wireless carriers is designated as an ETC at the state level.[39]

Even more absurd, NTCA/OPASTCO adds that "[i]f rural ILEC holding companies must comply with differing regulations through multiple state jurisdictions, wireless petitioners that voluntarily seek ETC status from more than one state commission should be required to comply with each state's ETC requirements as well."[40] Requiring wireless ETCs to comply with each state's different requirements for a reasonable request for service would clearly erode the "uniform, national and deregulatory" scheme under which CMRS carriers operate.[41] The Commission has specifically found that wireless carriers "market and price their services at the national level";[42] no such finding has ever been made regarding ILECs. Although Dobson recognizes that ETC designation at the state level will bring different designation criteria because the states perform such designations,[43] Congress clearly did not intend that the definition of "a reasonable request for service" be delegated to the states. Further, by making such an argument,

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[39] Of note, NTCA/OPASCTO misconstrued Dobson's Petition. Dobson argued that certain line extension and COLR requirements had rate-regulation effects. Dobson did not argue that a state's "reasonable request for service" definition would have such effects. Nonetheless, as described in Dobson's Petition and herein, defining a reasonable request for service is a federal matter, not to be left to the states.

[40] NTCA/OPASCTO Opposition at 6-7.

[41] *Truth-in-Billing and Billing Format, National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing,* CC Docket No. 98-170, CG Docket No. 04-208, *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking,* 20 FCC Rcd 6448, 6467 (2005).

[42] *Id.* at 6464.

[43] Further, a federal standard in no way interferes with states' rights to evaluate ETC applicants "capability and commitment to provide service." Nebraska Companies Opposition at 7. The reasonable request for service standard is a relatively small part of the inquiry, and states still would have the responsibility of applying the federal standard.

NTCA/OPASTCO attempts to impose monopoly-era regulations on competitive wireless services. There simply is no reason for the Commission to "regulate up" to parity; rather, as Dobson has suggested in the past, the Commission should deregulate LECs to the extent that competition exists.

Moreover, the ILEC Petitioners "do not oppose the wireless petitioners' request that the Commission define the standard for what constitutes a 'reasonable request' for service, as long as that standard is part of overall ETC designation guidelines that are mandatory in all states."[44] As noted in its Opposition, Dobson opposes mandatory criteria because state commissions have unique expertise to determine which carriers are qualified to be designated as ETCs in their states.[45]

III. DOBSON MAINTAINS THAT WIRELESS ETCS SHOULD NOT BE REQUIRED TO SUBMIT INFORMATION AT THE WIRE CENTER LEVEL

The Nebraska Companies and the ILEC Petitioners oppose Dobson's request that the Commission reconsider requiring submission of data in conjunction with the new planning and reporting requirements at the wire center level. As Dobson argued in its Petition, requiring submission of such data at the wire center level will increase inaccuracies and decrease the usefulness of such data. In part, the inaccuracies result because facilities in one wire center, such as towers, can be used to provide services in other wire centers. The deployment of wireless facilities does not recognize wire center boundaries. Moreover, wireless carriers simply do not compile data or project spending at the wire center level. By requiring reports at the wire center

[44] ILEC Petitioners Comments at 2, 7.

[45] Dobson Opposition at 6-9.

level, the Commission will unnecessarily increase the costs for wireless ETCs and reduce support that could be used for other services to consumers.

The Minnesota PUC, in determining whether to adopt the FCC's new regulations, echo Dobson's concerns in rejecting the requirement that wireless carriers file their network plan information at the wire center level. The Minnesota PUC states that "the costs of requiring carriers to report required information on a wire-center basis would be high, since they do not maintain records on that basis and would have to develop allocation procedures, while the benefits would be low, since the accuracy and reliability of the data would be compromised."[46]

Although he ILEC Petitioners argue that "it is entirely reasonable" to require reporting by wireless ETCs at the wire center level because wireless ETCs are designated at the wire center level and receive support at this level,[47] the ILEC Petitioners do not adequately refute Dobson's argument that such reporting is unnecessarily burdensome. After all, wireless carriers can demonstrate and forecast build-out within their designated areas without the unnecessary and arbitrary step of mapping it to ILEC wire centers. The Nebraska Companies attempt to argue that reporting at the wire center level is not administratively burdensome because CETCs already report the number of subscribers they serve by wire center.[48] However, reporting subscribers and providing information on the planned and completed build-out of facilities are two totally different issues.

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[46] *Minnesota PUC Order* at 9.

[47] ILEC Petitioners Comments at 4.

[48] Nebraska Companies Opposition at 5.

The Nebraska Companies' argument that submission of information at the wire center level is essential to reduce opportunities for creamskimming also lacks merit.[49] As an initial matter, the Nebraska Companies' assertion mixes apples and oranges – creamskimming is an issue at designation; it does not bear on network build-out or related reporting requirements. CETCs are designated for service areas, not wire centers. The request-for-service requirement ensures that CETCs spend money where it is needed to extend service to customers. To further attempt to restrict funding to particular wire centers would be inefficient and would disserve consumers.

Moreover, addressing issues of creamskimming is totally within the control of the rural LECs. Rural LECs can disaggregate and target support to protect against creamskimming.[50] If wireless ETCs try to creamskim after designation, rural LECs could put a stop to such efforts by disaggregating and targeting support.

IV. THE RECORD REFLECTS THAT CETCS SHOULD BE SUBJECT TO THE SAME OUTAGE REPORTING REQUIREMENTS AS OTHER CARRIERS

The ILEC Petitioners agree with Dobson and other carriers that "CETCs designated by the FCC need not be subject to enhanced outage reporting requirements. It is sufficient that all carriers currently are subject to the same network outage reporting requirements."[51] No other

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[49] *Id.* at 4-5.

[50] *See* 47 C.F.R. § 54.315; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, *Fourteenth Report and Order,* 16 FCC Rcd at 11244, 11302 (2001); *Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming,* CC Docket No. 96-45, *Order on Reconsideration,* 16 FCC Rcd 19144, 19149 (2001) (noting that because of disaggregation "any concern regarding 'cream-skimming' of customers …has been substantially eliminated").

[51] ILEC Petitioners Comments at 2.

party mentioned the issue; thus, there appears to be agreement that the additional reporting requirements should be rescinded.

The ILEC Petitioners note, however, that to the extent that the heightened outage reporting requirements in the *ETC Criteria Order* are as a result of the Commission's desire to ensure adequate service quality by CETCs, requiring CETCs to submit to state service quality or COLR requirements would more directly advance this purpose.[52] Dobson agrees that all carriers should be subject to the same outage reporting requirements but objects to submitting to state service quality or COLR requirements.

First, as noted above, it is not necessary or in the public interest to "regulate up" to parity. The FCC's emphasis on competition instead of regulation is a principle reason for the phenomenally successful growth of the wireless networks and the number of subscribers. By anyone's measure the wireless marketplace is a huge success story. Where regulation is necessary, the FCC's support of a single set of federal rules as opposed to 50 different sets of rules also has been of great importance. The LECs must not be permitted to turn back the clock and regulate where regulation has been shown to be unnecessary. As such, state commissions who find that LECs are subject to adequate competition should deregulate LECs but not increase regulation for wireless ETCs, whose quality of service already is ensured by competitive pressure. Second, the Commission has rejected attempts in the past to impose state COLR requirements on CETCs.[53] Finally, as noted by Dobson in its Petition, the states' imposition of

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[52] *Id.* at 6.

[53] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8856 (1997) (rejecting proposals to impose "the regulatory requirements that govern ILECs, including pricing, marketing, service provisioning, and service quality requirements, as well as carrier of last resort (COLR) obligations" on ETCs as a
(continued on next page)

COLR obligations is akin to classic entry regulation, which states are preempted from imposing on CMRS carriers.[54]

V. CONCLUSION

For the foregoing reasons, Dobson respectfully requests that the Commission reject the arguments made by the ILEC Petitioners, the Nebraska Companies and NTCA/OPASTCO in their oppositions and grant Dobson's Petition for Reconsideration.

Respectfully submitted,

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condition of being designated). Under federal law, however, an ETC may not relinquish its designation without giving advance notice to the state commission or the FCC (if not regulated by the state commission). 47 U.S.C. § 214(e)(4). This provision operates as a sort of federal COLR requirement.

[54] Dobson Petition at 9.

CERTIFICATE OF SERVICE

I, Pervenia P. Brown, hereby certify that on this 15th day of August, 2005, copies of the foregoing "REPLY OF DOBSON CELLULAR SYSTEMS, INC. TO OPPOSITIONS TO DOBSON'S PETITION FOR RECONSIDERATION OF THE *ETC CRITERIA ORDER*" were served via first class U.S. mail, postage prepaid, on the following:

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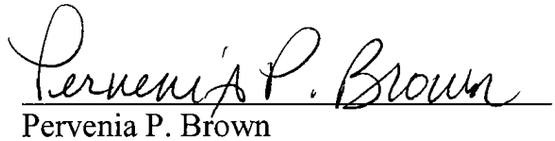

Pervenia P. Brown